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he and wife have good right to sell the property, and that they will warrant generally the title thereto, is not estopped from claiming his share in remainder as heir of his daughter, who dies unmarried and without issue; his liability on the covenant, if any, being personal, and not operating to enlarge the estate granted.

[Ed. Note.—For other cases, see Estoppel, Dec. Dig. § 38.* 5 Va.-W. Va. Enc. Dig. 204.]

2. Improvements (§ 4*)—Compensation—Good Faith of Claimant.—Under Code, § 2763, authorizing the recovery of improvements on land made by a claimant having reason to believe that his title is good, a purchaser may not close his eyes to his record title, and recover for improvements on the theory that there was reason to believe that his title is good; but his belief must be founded in ignorance of facts which cannot be predicated of a purchaser affected with constructive notice.

[Ed. Note.—For other cases, see Improvements, Cent. Dig. §§ 4-26; Dec. Dig. § 4.* 7 Va.-W. Va. Enc. Dig. 327.]

Error to Circuit Court, Page County.

Ejectment by Ethel McDonald and others against U. G. Rothgeb and others. There was a judgment granting insufficient relief, and plaintiffs bring error. Reversed and rendered.

H. W. Bertram, C. A. Hammer, O. B. Roller and Ed. C. Martz, for the plaintiffs in error.

R. F. Parks and Walton & Walton, for the defendants in error.

CARDWELL, J., absent.

CHESAPEAKE & O. RY. CO. *v.* BARGER.

Nov. 16, 1911.

[72 S. E. 693.]

1. Carriers (§ 320*)—Injury to Passengers—Actions—Evidence.—In an action by a female passenger for injuries alleged to have been received while alighting from defendant's train, evidence as to the cause of the injury held to be conflicting, and to raise a question for the jury.

Ed. Note.—For other cases, see Carriers, Cent. Dig. § 1244; Dec. Dig. § 320.* 2 Va.-W. Va. Enc. Dig. 727.]

2. Evidence (§ 571*)—Weight—Uncontroverted Evidence.—The jury may disregard the testimony of an unimpeached medical expert, even though he was the only one who saw the case, and his testimony has not been directly controverted.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 2395-2398; Dec. Dig. § 571.* 5 Va.-W. Va. Enc. Dig. 351, 354.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

3. Carriers (§ 315*)—Evidence—Variance—Use of Videlicet.—In an action against a carrier by a passenger for injury while alighting from a train, where the declaration alleged that the passenger "was compelled to step down from the car a great distance to the ground, to wit, two feet," evidence that the distance was between 26 and 34 inches was not so different from the allegation as to require the court to strike it out on the ground of variance.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. § 1281; Dec. Dig. § 315.* 11 Va.-W. Va. Enc. Dig. 244, 245.]

4. Carriers (§ 317*)—Injuries to Passengers—Actions—Evidence—Admissibility.—In an action for injuries received by a passenger in alighting from a train at a station where there was no platform, evidence tending to show how the accommodations at this station compared as to safety with other stations, and thus show lack of care on the part of the carrier in failing to furnish proper accommodations, was admissible.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1295-1306; Dec. Dig. § 317.* 2 Va.-W. Va. Enc. Dig. 725, 726.]

5. Evidence (§ 155*)—Evidence Admissible Because of the Admission of Other Evidence.—In an action by a passenger for injuries received while alighting from a train at a station, where there was no platform, the defendant having introduced evidence comparing the accommodations at this station with those of other stations cannot complain that the passenger introduced other evidence along the same line.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 445-458; Dec. Dig. § 155.* 2 Va.-W. Va. Enc. Dig. 725, 726.]

Error to Circuit Court, Botetourt County.

Action by Maggie E. Barger against the Chesapeake & Ohio Railway Company. There was a judgment for plaintiff, and defendant brings error. Affirmed.

R. L. Parrish, for the plaintiff in error.

R. Haden Penn, A. P. Staples, Jr. and A. B. Hunt, for the defendant in error.

CARDWELL, J., absent.

FERRIMER v. COMMONWEALTH.

Nov. 16, 1911.

[72 S. E. 699.]

1. Indictment and Information (§ 110*)—Following Statute—Sufficiency—Intoxicating Liquors.—The indictment alleged that accused, on a certain date, upon the order of V., did unlawfully sell,

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.